

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

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D. DEATON, et al

*Plaintiff,*

v.

PATRICIA STEPHENS, et al

*Defendants.*

CASE NO. 2:23-cv-00713-RDP

**RESPONSE IN OPPOSITION TO DAVIDSON MOVANTS' MOTION FOR  
SANCTIONS**

COME NOW Plaintiffs respectfully request this Honorable Court deny movant Kim Davidson and Kim Davidson Law Office, LLC's ("Davidson Movants") Motion for Sanctions as they are without legal or factual basis. Plaintiffs contemporaneously file a Consolidated Brief in Opposition to Motions for Sanctions. In further support thereof, Plaintiffs state as follows:

**INTRODUCTION**

Davidson Movants failed to provide adequate support to this Court that Rule 11 sanctions are warranted. A dispute of material fact does not support Rule 11 sanctions. Davidson Movants dispute some, but not all, allegations raised in the Complaint. Davidson Movants attempt to

improperly move the Court on behalf of an unknown number of additional Defendants<sup>1</sup>, who are represented by counsel. (doc 210 p.2-9 ¶4, ¶11-¶12 and ¶21-¶22) Davidson Movants ask this Court to review the Complaint on its merits and “cause an investigation to be conducted . . . on the merits” (doc 210 p. 9).

### **FACTS**

As best can be discerned from Davidson Movants’ motion for sanctions, Davidson Movants take issues with the allegation of her involvement in the Enterprise and the allegation of her substance abuse disorder in the Complaint. (*See generally* doc. 210).

Davidson Movants publicly discussed her substance abuse disorder and the severity of its effects on her. (doc. 180-20 p. 2)

In Davidson Movants “Motion for Sanctions” at “B. Rule 11”, Davidson Movants allege the claims were brought for an improper purpose such as to harass, cause unnecessary delay or needlessly increase the cost of litigation. (doc. 210 p. 11) As support for this allegation, Davidson Movants make false allegations about the Plaintiffs that are not found in the four corners of the agreement. Davidson Movants falsely allege that rather than “assert all his claims in the Divorce Court or in an appeal to the Alabama Court of Civil Appeals/Alabama Supreme Court”, Plaintiffs file this Complaint “against anyone who had anything to do with their divorce case”. (doc. 210 p. 11 ¶36). These statements are given as the entire basis of Davidson Movants argument for claims presented for improper purpose. Plaintiffs did not sue everyone who had anything to do with their

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<sup>1</sup> Plaintiffs do not address the issues raised by Davidson Movants as to other Defendants in this case herein, as they are not properly before the Court or have been addressed in detail in other responses to motions for sanctions.

divorce case. Davidson Movants knew or should have known this to be false, because she was involved in one of the Plaintiffs' cases. Plaintiffs have worked with multiple attorneys, friends and counselors, who have shared additional stories of how widespread the allegations in Plaintiffs' Complaint are to other families in the community. Plaintiffs did not file this Complaint in lieu of an appeal or mandamus in the Alabama Court of Civil Appeals. Plaintiff T. Peake's custody case was on appeal at the time the Complaint was filed. Plaintiff T. Peake has previously filed for extraordinary relief through the pendency of her custodial case. Plaintiff D. Deaton's custody case is currently on appeal. Plaintiff D. Deaton has previously filed for extraordinary relief through the pendency of his custodial case. Davidson Movants allegations have no basis in law or fact. (doc. 210 p. 11) Davidson Movants ask this Court to sanction the undersigned for allegedly failing to making a reasonable inquiry into allegations before pleading them before this Court, while knowingly making false statements about Plaintiffs.

Davidson Movants further list all claims brought against them and the alleged basis on those claims and ask the Court, who has currently abstained, to reach to the merits of the case and determine if Plaintiffs had evidence to support these allegations under existing law.

Davidson Movants improperly move the Court on behalf of the "In-Law Defendants", who are represented by counsel. Davidson Movants allege the "In-Law Defendants" were not state actors, but do not address if there were acting under color of state law. Davidson Movants further argue the dispute of fact and the merits of the case on behalf of the "In-Law Defendants". (doc. 210 p. 12 at 40-41).

A dispute of material fact does not support Rule 11 sanctions. (See Plaintiffs' brief in support filed contemporaneously)

**ARGUMENT**

The undersigned made more than a reasonable inquiry before filing the Complaint with this Court.

Davidson Movants' Motion for Sanctions run afoul of the strictures of Rule 11. Rule 11(c) limits the subject matter of a motion for sanctions to violations of the assurances enumerated in Rule 11(b).

There are no violations by the undersigned or the Plaintiffs of the substantive assurances the rule governs.

A sanctions motion under a court's inherent powers or § 1927 requires a showing that the party acted in bad faith. *See Hernandez v. Acosta Tractors Inc.*, 898 F.3d 1301, 1306 (11th Cir. 2018); *Amlong*, 500 F.3d at 1239. No such showing is made here.

In the context of inherent powers, the party moving for sanctions must show *subjective* bad faith. *See Hernandez*, 898 F.3d at 1306; *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017). This standard can be met either (1) with direct evidence of the attorney's subjective bad faith or (2) with evidence of conduct "so egregious that it could only be committed in bad faith." *Purchasing Power*, 851 F.3d at 1224-25. Evidence of recklessness alone won't suffice. *Id.* at 1225. No such showing is made here.

Under § 1927, on the other hand, the party moving for sanctions must show *objective* bad faith. *See Amlong*, 500 F.3d at 1239-41. Usually, this means an attorney acted "knowingly or recklessly." *Schwartz v. Millon Air, Inc.*, 341 F.3d 1220, 1225 (11th Cir. 2003). The statute imposes a "high standard" that requires the moving party to show that the other side engaged in behavior that "grossly deviates from reasonable conduct." *Amlong*, 500 F.3d at 1240, 1242. But

although the standard is objective, the moving party may still rely on evidence of subjective bad faith to make this showing. That's because an act done in subjective bad faith is also more likely to be objectively unreasonable. *See id.* at 1241. No such showing is made here and could not be made here.

Davidson Movants has provided no factual legal basis for sanctions.

**WHEREFORE**, Davidson Movants' Motion for Sanctions is due to be denied.

Respectfully submitted this 11<sup>th</sup> day of October, 2023.

/s/ *Scott Tindle*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of October, 2023, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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